day law had been "honored in the breach" for forty years. *In re Hopp* (1910, D. C. Wis.) 179 Fed. 561. The argument advanced in the latter case that the standard of conduct contemplated by the statute does not require the applicant to rise above the level of the mass of the people, is persuasive; yet it is believed that the principal case presents the safer view. It is a dangerous doctrine to admit that good citizens may habitually disregard law. The remedy for an unpopular law is repeal, not violation. But *quaere* whether there might not be a difference according to the character of the law violated—a habitually disregarded traffic ordinance, for instance. In any case, as the court intimates, the applicant has not lost his privilege of citizenship forever. After good behavior for the requisite time he may apply again.

ALIENS—NATURALIZATION—CANCELLATION OF CERTIFICATE FOR FRAUD EVIDENCED BY LOYALTY TO ENEMY COUNTRY OF ORIGIN.—A naturalized American citizen of German origin, having made statements which indicated his attachment and loyalty to Germany rather than to the United States, a proceeding was instituted under section 15 of the Act of June 29, 1906 (34 Stat. L. 601) for the cancellation of his certificate of naturalization on the ground of fraud in its procurement, the applicant's oath at the time of naturalization to the effect that he "absolutely and entirely" renounced and abjured all allegiance to any foreign sovereignty and particularly to the Emperor of Germany having been false. *Held,* that the certificate of naturalization was obtained by fraud and must be cancelled. *United States v. Wursterbarth* (1918, N. J.) 249 Fed. 908.

A similar holding was made in *United States v. Darmer* (1918, W. D. Wash.) 249 Fed. 989. A certificate of naturalization is not only an evidence of citizenship, but, emanating from the judicial department of the government, it is also the evidence of a judgment. Attorney-General Ackerman erroneously held that it was a judgment binding only on parties and their privies; hence that the United States was not concluded by a fraudulent certificate of naturalization (1871) 13 Op. Atty. Gen. 376. The true ground is rather that a judgment *in rem* may be attacked for fraud, or that, being an *ex parte* proceeding, the United States is not concluded by the certificate granted. *Johannessen v. United States* (1911) 225 U. S. 227, 237, 32 Sup. Ct. 613. Even before the Act of Congress of June 29, 1906, which for the first time gave statutory power to the Department of Justice to institute direct proceedings for the cancellation of fraudulently obtained certificates of naturalization, it had been held that only the United States and not a State or private parties could impeach the record of naturalization. *United States v. Norsch* (1890, C. C., E. D. Mo.) 42 Fed. 417; *Petersen v. State* (1905, Tex.) 89 S. W. 81 (State cannot); *Commonwealth v. Paper* (1868, Pa.) 1 Brewster 263, 267 (private individuals cannot). Section 15 of the Act of 1906 has been held by the Supreme Court to be retroactive. *Johannessen v. United States, supra; Luria v. United States* (1913) 231 U. S. 9, 34 Sup. Ct. 10. It therefore covers the case of individuals who, like the defendant in the principal case, were naturalized prior to its passage. The Department of Justice has limited its proceedings under the statute to cases in which it seemed that the result of the suit would benefit the citizenship of the country. The Department's Circular letter No. 107 of Sept. 20, 1909, reads in part: "The legislation referred to, being retroactive, is construed to be remedial rather than penal in its nature; for the protection of the body politic rather than for the punishment of the individual concerned." Most of the proceedings instituted under the Act have involved clear cases of fraud on the part of the applicant, usually false allegations under oath as to the length of his residence in the United States, or as to other essential facts. *United States v. Mansour* (1908, S. D. N. Y.)

170 Fed. 671; *United States v. Albertini* (1913, Mont.) 206 Fed. 133. But the statute itself provides that certain acts subsequent to naturalization shall be construed as *prima facie* evidence that the naturalization was obtained in bad faith, *e. g.*, proceeding abroad within five years after naturalization to take up a permanent residence there. So it seems reasonable that clear evidence afforded by subsequently spoken words of the falsity of the oath renouncing allegiance to a foreign sovereign, an essential condition of naturalization, proves fraud in obtaining citizenship. To determine a person's state of mind at a given time, it is proper to consider subsequently spoken words or evidence of a subsequent state of mind. *Waterman v. Whitney* (1854) 11 N. Y. 157. Wigmore, *Evidence,* sec. 233. Although 36 and 30 years respectively had elapsed since the naturalization of the defendants in the principal case and the other recent case which accords with it, it is not unreasonable to suppose, said the court, that the attachment to the native country, only now openly avowed, was stronger at the time of naturalization than now. Provided the evidence of alien loyalty is convincing, it is not unfair to conclude that the mental reservation thereof at the time of naturalization, though latent and not manifested for many years, falsified the oath by means of which the certificate of naturalization was secured, and constitutes that fraud which justifies cancellation proceedings.

ARMY AND NAVY—CRIMINAL OFFENSES—IMMUNITY OF NAVAL DISPATCH DRIVER VIOLATING STATE SPEED LAW BY ORDER OF SUPERIOR OFFICER.—A criminal complaint was brought against the defendant for violating the automobile speed law of Rhode Island, and the following question of law was certified to the State Supreme Court: "Is a man of the U. S. Naval Reserve Force, on duty as a dispatch driver, amenable to the provisions of [the state motor vehicle law] while acting under specific instructions of his superior officer to proceed in a motor vehicle with all possible dispatch along one of the highways of the state, which instruction said man was obliged to obey, which instruction was assumed by said officer to necessitate the violation by said man of the speed laws of the state, and which instruction was given by said officer in a matter deemed by him to be of urgency and appertaining to the conduct of the war between the United States and Germany?" *Held,* that the question should be answered in the negative. *State v. Burton* (1918, R. I.) 103 Atl. 962.

See COMMENTS, p. 61.

BILLS AND NOTES—HOLDER IN DUE COURSE—USURY AS DEFENSE.—The defendant executed a promissory note for $2,100, payable to the order of one F, and delivered it to the latter as his agent for the purpose of having it discounted. F sold it to the plaintiff for $1,850, endorsing it and delivering it in the usual way. To a suit on the note the defendant pleaded usury. *Held,* that the plaintiff, although a holder in due course, was not entitled to recover. *Sabine v. Paine* (1918, N. Y.) 119 N. E. 849.

Whether usury is a mere personal defense not available against a holder in due course, or an absolute defense good against everyone, depends upon the usury statute of the particular jurisdiction concerned. The present case is of interest because it settles apparently for the first time the effect of the uniform Negotiable Instruments Law upon the usury law of New York in force at the time of its passage. That law expressly declared that all "bonds, bills, notes . . . tainted with usury" were void and that upon proof of the facts "the court shall declare the same to be void, and enjoin any prosecution thereon, and order the same to be surrendered and cancelled." General Business Law (N. Y.